IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6862 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHANKERLAL RAMSHANKER JOSHI

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR MH RATHOD for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/01/2000

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties. Rule. Mr.M.H.Rathod, learned counsel waives service of rule.

2. On the joint request of the learned counsel for

the respective parties, rule is taken up for final hearing today.

3. The petitioner herein is the employer - Gujarat State Road Transport Corporation in respect of respondent workman who was at the relevant point of time an employee - a conductor.

The respondent conductor was charged in a domestic inquiry to the effect that, on 7th April 1993, at about 1.30 p.m., he was on duty for the purpose of taking a trip to Nasvadi, however instead of reporting for duty, he was found near the Bodeli Control Point in the drunk condition and while drunk in a public place, he was indulging in obscene abuses with passengers, and was creating mayhem and on account of these acts, the Depot Manager `A' at Bodeli was required to file a criminal complaint in the police against him and by his acts, the workman had also adversely affected the prestige of the employer. As a result of the inquiry, the workman conductor was found guilty of the charges levelled against him, and a punishment of dismissal was imposed.

4. This was challenged by the workman by way of a Reference [LCV] No. 823/94, wherein the Labour Court in the impugned judgement and aware directed reinstatement with 25% backwages with continuity of service.

It is pertinent to note that, before the Labour Court, although by pursis exh.8, the workman had contended that he has not accepted the finding of the domestic inquiry, the workman had not taken any further steps in support of this contention. In this context, it may be noted that the employer had filed documents alongwith exh.7 which included papers of the domestic inquiry, chargesheet, default card etc. The employer by exh.11 had made clear that, apart from this documentary evidence, the employer does not wish to lead any further evidence. The workman therefore by exh.12 declared that he does not wish to lead any further evidence. Thus, the initial contention taken by the workman that he does not accept the findings of the domestic inquiry remains a mere pleading and averment, and as such, since the same is not supported by any further contention or evidence, is of no consequence.

5. In the present petition, the petitioner employer challenges the judgement and award of the Labour Court mainly on the ground that the discretion exercisable u/s 11-A of the I. D. Act does not give unfettered jurisdiction to the Labour Court, that such discretion

must be exercised on well defined judicial principles, and it is not necessary that the punishment must be reduced merely because the workman has filed a reference and because the power to interfere with the punishment imposed by the disciplinary authority exists.

6. There can be no doubt that the proposition as set out by the learned counsel for the petitioner is a proposition of law which cannot be contested. The only question which would arise is whether the Labour Court has exercised its jurisdiction, and interfered with the punishment awarded by the disciplinary authority, is on sound principles, or otherwise.

6.1 It is also pertinent to note that, on the evidence on record, the Labour Court has not interfered with the finding of guilt recorded by the Disciplinary Authority.

7. On the facts and circumstances of the case, I find that Labour Court has given absolutely no reasons for interference, except to state that the punishment of dismissal is too harsh. The only other opinion expressed by the Labour Court is to the effect that, when imposing punishment, such punishment should be such which would induce the workman not to commit such a default again, but for this purpose, the punishment of dismissal is too harsh.

8. On the facts and circumstances of the case, I am of the opinion that the Labour Court has taken an overly casual attitude, looking to the gravity of the charges. Once it is found that the workman, instead of reporting for duty, appears drunk at a nearby place at about the time of joining duty, indulges in obscene abuses and exchanges such abuses with members of public and passengers, and creates mayhem amongst such passengers, to the extent where a senior officer such as Depot Manager is required to intervene and file a criminal complaint against the workman, this is not an incident which can be taken lightly. It cannot be overlooked that Gujarat is a State in which not only the consumption of liquor without permit is a criminal offence, but this type of behaviour in public while under the influence of liquor is in itself a distinct and separate offence. It is therefore obvious that the acts which have been found proved against the workman in the disciplinary inquiry amount to a criminal offence. Whether he is convicted in a criminal court or not, is not a relevant issue. In fact, there is nothing on record to show as to what was the result of such criminal prosecution. For this reason also, the outcome of the criminal trial is immaterial.

9. Thus, on the facts and circumstances of the case, I am of the opinion that the judgement and award of the Reference Court, on the facts and evidence proved on the record, amount to a perversity in law and therefore, deserves to be quashed and set aside. Accordingly, the same is quashed and set aside. The present petition is therefore allowed. Rule made absolute with no orders as to costs.

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